No. 75-5027

In the Supreme Court of the United States

OCTOBER TERM, 1975

RUSSELL BRYAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PETITIONER

v.

ITASCA COUNTY, MINNESOTA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

ROBERT H. BORK,
Solicitor General,

PETER R. TAFT,
Assistant Attorney General,

HARRY R. SACHSE,
Assistant to the Solicitor General,

EDMUND B. CLARK,
JACQUES B. GELIN,
CHARLES E. BIBLOWIT,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5027

RUSSELL BRYAN, INDIVIDUALLY AND ON BEHALF OF ALL OTHER PERSONS SIMILARLY SITUATED, PETITIONER

v.

ITASCA COUNTY, MINNESOTA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

MEMORANDUM FOR THE UNITED STATES AS *AMICUS CURIAE*

INTEREST OF THE UNITED STATES

This case presents the question whether, by virtue of Public Law 280,[1] the State of Minnesota or the County of Itasca may impose a personal property tax on a mobile home that belongs to an enrolled Chippewa Indian, is used as his permanent home and is located within the Leech Lake Reservation on land held by the United States in trust for the Chippewa Indians. Because of its treaty and trust obligations to reservation Indians the United States is interested in protecting such Indians from diminutions, not expressly authorized by Congress, of their immunities from state taxation. The United States is also concerned that Public Law 280 be interpreted so as to effectuate its purpose.

---

[1]Sections 2 and 4 of the Act of August 15, 1953, 67 Stat. 588, 589, 18 U.S.C. 1162, 28 U.S.C. 1360; Act of April 11, 1968, Title IV, 82 Stat. 78, *et seq.*, 25 U.S.C. 1321, *et seq.*

STATEMENT

The petitioner, Russell Bryan, is an enrolled member of the Minnesota Chippewa Tribe who lives with his family in a mobile home on the Leech Lake Reservation.[2] The mobile home "is his permanent and continuous residence" (Stipulation 2, App. 8). It "has regular permanent connections for water, sewer and electric service" and is located on land held in trust by the United States for the Tribe *(ibid.)*.

During the summer of 1972, petitioner received notices from the Auditor and the Treasurer of Itasca County that he had been assessed a total of $147.95 in personal property taxes on the value of his mobile home for the years 1971 and 1972. Thereafter, he brought this action in a state district court on behalf of himself and others similarly situated against Itasca County, the State of Minnesota, and the State Commissioner of Taxation seeking a declaratory judgment that the State and County have no authority to levy such a tax and an order enjoining its collection. Subsequently, on petitioner's motion, the State and State Tax Commissioner were dismissed as defendants (App. 11).

The district court ruled that the County was entitled to judgment against petitioner in the amount of the tax (App. 16) and entered judgment accordingly (App. 12-13). It adopted the stipulation of the parties as its findings of fact

---

[2]The Minnesota Chippewa Tribe is a federally recognized tribe with a Constitution and By-Laws approved by the Secretary of the Interior. See *Leech Lake Band of Chippewa Indians* v. *Herbst*, 334 F. Supp. 1001 (D. Minn.). Its Reservation was established by the Treaty with the Chippewas of February 22, 1855, 10 Stat. 1165, reproduced at App. 58-67.

(App. 14-16) with an additional finding (Finding 9, App. 16) "[t]hat there is no claim that the * * * mobile home is any part of the real estate, but is personal property." In a memorandum opinion the court held that Public Law 280 authorized state taxation within the Reservation "except in certain instances which are not applicable to the situation here involved" (App. 18). The court attached, as part of its memorandum, pages from the brief of the Commissioner of Taxation to the effect that the Minnesota Constitution and Public Law 280 permit the taxation at issue (App. 20-35).

The Minnesota Supreme Court affirmed (App. 36-48). It rejected the district court's conclusion that the Minnesota Constitution expressly authorized the taxation, noting that the Minnesota Enabling Act is silent about Indian lands (App. 39) and that the Minnesota Supreme Court previously held that, in the absence of a treaty or federal statute giving the state jurisdiction within a Reservation, its jurisdiction "does not extend over the individual members of an Indian tribe maintaining their tribal relations and organization upon a reservation within * * * the state" (App. 40). But the court held that the grant of civil jurisdiction to the State in Public Law 280, codified as 28 U.S.C. 1360(a), includes taxing authority, and, since 28 U.S.C. 1360(b) does not exempt non-trust property from this authority, the County may assess the tax in question (App. 41-48).

The court stated further that petitioner had, for the first time, alleged in his brief before that court that the mobile home was in fact annexed to tribal trust land and is thus exempted from state taxation under 28 U.S.C. 1360(b) Stating that the case had been tried on the basis that the mobile home was personal property, the court declined to rule on whether the "mobile home can be taxed

if in fact it is permanently affixed to the realty and cannot be removed by the owner, and thus is assessable in the manner of real estate taxes" (App. 48).

ARGUMENT

Whether Public Law 280 altered state powers of taxation within Indian reservations is an issue the Court had before it in *Tonasket* v. *Washington*, 411 U.S. 451.[3] In that case, the United States filed an *amicus curiae* brief in which, after discussing this statute and its legislative history, we concluded that by enacting Public Law 280 Congress did not "give additional taxing power to States which elect to make their judicial process available to reservation Indians" (U.S. Brief, p. 15).[4]

The Court in *Tonasket*, however, did not decide the question; instead it remanded the case for reconsideration in light of recent state legislation and the decision in *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, which held that Arizona could not impose a tax on the income of Navajo Indians residing on the Navajo Reservation. 411 U.S. at 177-181. The Court later dismissed for want of a substantial federal question an appeal from the decision on remand in *Tonasket*, thereby leaving open the Public Law 280 question presented here. *Tonasket* v. *Washington*, 420 U.S. 915.[5]

---

[3]The Court reserved decision on the issue in *McClanahan* v. *Arizona State Tax Commission*, 411 U.S. 164, 178, n. 18.

[4]We are serving copies of our brief in *Tonasket* upon the parties in this case. In *Tonasket*, a Colville Indian who owned a store on the Reservation sued the State of Washington, claiming that the State had no authority to require him to collect cigarette taxes on his sales to Indians and non-Indians.

[5]On remand, the Supreme Court of Washington had held that (84 Wash. 2d 164, 181, 525 P. 2d 744, 754):

Since our *amicus* brief in *Tonasket* fully discusses the purpose and effect of Public Law 280 in regard to state taxing authority and since petitioners have thoroughly argued the issue in their brief, with which we agree, this memorandum will not repeat all of the arguments more fully developed in our *Tonasket* brief.

1. In the absence of special authorization from Congress, States lack taxing authority with respect to Indian property on Indian reservations. See *Mescalero Apache Tribe* v. *Jones*, 411 U.S. 145, 148; McClanahan v. *Arizona State Tax Commission*, 411 U.S. 164, 176-177; *United*

> Public Law 83-280 grants authority to the State to extend its cigarette excise tax to Indian retailers serving *non-Indian consumers* within the boundaries of a reservation over which state civil and criminal jurisdiction has been assumed. (Emphasis added.)

By thus holding only that Public Law 280 authorized the State to require an Indian retailer to affix cigarette tax stamps and *collect* the tax on sales to non-Indians, the court avoided deciding whether Public Law 280 authorized state taxes on reservation Indians. The court specifically characterized the cigarette tax as (84 Wash. 2d at 180, 525 P. 2d at 754) "among other things, one levied upon the 'use' and 'consumption' of cigarettes"—as to non-Indians, a matter within the State's police power as a health regulation. The court further stated (84 Wash. 2d at 180, 525 P. 2d at 754):

> [W]e note that this case does not involve a tax on trust lands, personalty, gross receipts, or income, * * *. [I]t would be dubious, to say the least, whether the state could compel him [the Indian retailer] to affix cigarette tax stamps or collect a retail sales tax in connection with his retail transactions with reservation Indians. *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed. 2d 165 (1965).

In light of this narrow holding, the Court's disposition of the appeal in *Tonasket* after remand was not a determination of the merits of the issue in the present case, involving a direct tax on a reservation Indian's home. See, also, *Fusari* v. *Steinberg*, 419 U.S. 379, 392 (concurring opinion of Mr. Chief Justice Burger).

States v. *Rickert*, 188 U.S. 432. "[I]n the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation * * *." *Mescalero Apache Tribe* v. *Jones*, *supra*, 411 U.S. at 148.

Likewise, with respect to the particular facts of this case, no State may—without specific congressional authorization—impose a personal property tax on the mobile home of an enrolled Indian located on trust land and used as his or her permanent residence. The reasons for the exemption are clear:[6]

> Wherever personal property is acquired by or for tribal Indians for use on Indian reservation lands in connection with or in furtherance of the policy adopted by the Government in encouraging the Indians to cultivate the soil and to establish permanent homes and families, or otherwise aid in their economic rehabilitation, such property may not be taxed by the state.

Thus the tax involved here could be imposed only if Public Law 280 authorized the state to impose it. But Public Law 280 by its terms is a grant of jurisdiction to certain States[7] over civil causes of action, not a grant of

---

[6]Cohen, *Handbook of Federal Indian Law* 262 (1942); see also United States Department of the Interior, *Federal Indian Law* 866 (1958).

[7]The Act originally applied only within the States of California, Minnesota, Nebraska, Oregon and Wisconsin, but it permitted other States, by subsequent affirmative action, also to assume jurisdiction under its provisions. The consent of the Indians affected was not required. Public Law 280, 67 Stat. 590, Sections 6 and 7. In 1968, the Act was amended to provide that thereafter a State could assume the jurisdiction authorized by the Act only "with the consent of the * * * tribe, occupying the particular Indian country" affected, in the form of a majority vote of the enrolled adult Indians affected. 82 Stat. 78, 79, 80,25 U.S.C. 1321(a), 1322(a), 1326.

taxing power. Its stated purpose is "to confer jurisdiction * * * [on certain States], with respect to criminal offenses and *civil causes of action* committed or arising on Indian reservations within such States * * *." (Emphasis supplied.) In addition to conferring criminal jurisdiction with respect to crimes involving Indians (18 U.S.C. 1162), the Act provides that certain States shall have "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in * * * Indian county [within such States] * * * to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory." 28 U.S.C. 1360(a).

The Act was primarily concerned with providing state authority for the enforcement of criminal law and the trial of civil causes of action affecting reservation Indians. The reference to "civil laws of such State * * * of general application" is properly read in conjunction with the phrase "causes of action." Such state civil laws provide the rules for decision in private disputes involving Indians, thus giving the state court a body of law by which to decide such disputes. This interpretation is consistent with the further provision in Public Law 280 directing that "[a]ny tribal ordinance or custom * * * if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section." 28 U.S.C. 1360(c).

This Court's reference to the Act in *Kennerly* v. *District Court of Montana*, 400 U.S. 423, as an "extension of state jurisdiction over civil causes of action by or against Indians arising in Indian country" (*id.* at 427) and the Court's reference to the 1968 amendments as "a new regulatory

scheme for the extension of state civil and criminal jurisdiction to litigation involving Indians arising in Indian country" (*id.* at 428), also support this view. State tax laws, in any ordinary sense, are not part of the body of general laws relevant to the resolution of civil disputes on Indian reservations, and are neither expressly nor by implication made applicable within reservations. While it is true that without civil or criminal jurisdiction over reservation Indians a State's tax could neither be imposed nor collected effectively, *McClanahan* v. *Arizona State Tax Commission, supra,* 411 U.S. at 178, it does not follow that the grant of such jurisdiction carries with it the authority to tax.

Public Law 280's exemptions from state taxation, set forth in 28 U.S.C. 1360(b) and relied upon by the Minnesota Supreme Court (App. 43), are not to the contrary. The express reference to immunity from state taxation for trust property does not mean that the State may impose taxes with respect to other property. Rather, this provision merely illustrates the general understanding, as we discuss below, that Public Law 280 would not affect state power to tax Indians (see U.S. Brief *Amicus Curiae* in *Tonasket, supra,* at pp. 8-11).

Moreover, the purpose of the tax immunity—to encourage reservation Indians to take up permanent residence and to assist in their economic development (see p. 6, *supra*)—is not tied to the particular character of the Indian property involved. While a building attached to trust land would rather plainly fall under the express provision barring state taxation of real property held in trust (see *Mescalero Apache Tribe* v. *Jones, supra,* 411 U.S. at 158), there is no apparent reason why Congress would have continued the exemption for this type of property but at the same time authorized the States to tax property such as petitioner's mobile home, which is his "permanent and

continuous residence" and has "regular permanent connections for water, sewer and electric service" (App. 8).

Indeed, although the issue has not been raised, it may be that petitioner's mobile home is in any event immune from state taxation because of the express provision in Public Law 280 exempting real property held in trust. To be sure, a state may classify a mobile home as personal property. But whether petitioner's mobile home should nevertheless come under the express exemption turns not on state law but on federal law, as *United States* v. *Rickert,* 188 U.S. 432, 442-444, indicates;[8] and the federal test for determining whether certain property came within the Public Law 280 exemption would have to take account of the degree of connection of the property with the use of the land itself. However, the difficulty of drawing such fine distinctions and the total absence of any congressional attention to this subject during the deliberations leading to

---

[8] In *Rickert,* Roberts County, South Dakota, sought to tax permanent improvements on trust property that were classified as personal property by state law. The Court rejected this attempt (188 U.S. at 442):

> But that classification cannot apply to permanent improvements upon lands allotted to and occupied by Indians, the title to which remains with the United States, the occupants still being wards of the Nation, and as such under its complete authority and protection. The fact remains that the improvements here in question are essentially a part of the lands, and their use by the Indians is necessary to effectuate the policy of the United States.

The Court further held that the County could not tax personal property used by Indians in the cultivation of their trust land (*id.* at 443-444). See also *Mescalero Apache Tribe* v. *Jones, supra,* 411 U.S. at 158-159, invalidating a state compensating use tax on materials used in construction of a ski lift and citing *Rickert* in support of the proposition that permanent improvements on a tribe's tax-exempt land are immune from state property tax.

enactment of Public Law 280 strongly suggest that Congress did not intend Public Law 280 to be construed as a grant of taxing authority to the States.

2. The legislative history of Public Law 280 indicates that it was intended primarily to provide an improved method for resolving civil disputes and to remedy what was perceived to be inadequate law enforcement on some reservations. H.R. Rep. No. 848, 83d Cong., 1st Sess. (1953); see Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. Rev. 535, 540-544 (1975). There is nothing in the committee reports or debates on the bill to show that Congress intended the Act's conferral of civil and criminal jurisdiction to extend the States' power to tax Indians. Yet if this were intended, it would have been a matter of sufficient importance to evoke discussion within Congress and opposition from the tribes. As petitioner demonstrates (Br. 37-41), the congressional hearings suggest to the contrary that Congress understood that States assuming jurisdiction under the Act would get no federal subsidy and no increased tax revenue (see also U.S. Brief *Amicus Curiae* in *Tonasket, supra*, at pp. 7-10).

Given the absence of language clearly authorizing state taxation of reservation Indians, and the absence of any legislative history showing an intent to permit such taxation, Public Law 280 is at best ambiguous as to state taxation of reservation Indians. The ambiguity should be resolved in favor of the Indians. See *Squire* v. *Capoeman*, 351 U.S. 1, 5-7; *Carpenter* v. *Shaw*, 280 U.S. 363, 367.

3. Although, as stated above, Congress chose not to subsidize the States for undertaking to provide judicial

services within Indian reservations, we pointed out in our brief in *Tonasket* (pp. 13-15):

> Merely because a State undertakes to provide judicial services within an Indian reservation, it does not follow that fairness requires that it also be given new taxing authority within the reservation. The States already have substantial sources of income attributable to Indians. Without requiring any particular service from the States, Congress has since 1924 permitted them to tax Indian mineral holdings, 42 Stat. 244, 25 U.S.C. 398, which have often been the only substantial wealth on land noted for its poverty. Though it is of less significance, Congress has also, without requiring any specific service for the Indians, allowed State gasoline and motor fuel taxes to be imposed on all sales within Indian reservations. 4 U.S.C. 104, 109. Moreover, a substantial part of the goods purchased by Indians living within a reservation are ordinarily purchased outside the reservation where the purchases are subject to state sales taxes without regard to the substantiality of services rendered the purchaser by the State. * * * Considerable sums are annually expended by the federal government on [Indian development] programs for tribes which have become subject to state criminal and civil jurisdiction. * * * These and other programs substantially reduce state responsibilities for providing services to reservation Indians and justify immunities from state taxes which would siphon off resources supplied by the federal government for the benefit of the Indians and income earned by the Indians who remain on reservations and under federal protection.

In contrast, as we also pointed out in our brief in *Tonasket* (pp. 12-13), the 1968 amendments to Public Law

280 permits States to obtain civil and criminal jurisdiction over reservation Indians only with their consent. Adding a tax consequence to an election to submit to such jurisdiction would seriously discourage any further elections in favor of such jurisdiction and would frustrate the essential purpose of the Act—to make state courts and law enforcement available within reservations where tribal and federal services may be inadequate.[9]

CONCLUSION

For the foregoing reasons, the judgment of the Supreme Court of Minnesota should be reversed.

---

[9]Since the issue has not been raised, it has not been decided whether the tax involved here is a State or county tax. In our view, however, even if Public Law 280 confers taxing authority on the State, it does not do so for political subdivisions of the State. Public Law 280 makes applicable only "those civil laws of such *State or Territory* that are of *general application*," 28 U.S.C. 1360(a) (emphasis added), and 28 U.S.C. 1360(c) reserves the authority of tribal ordinances and custom not inconsistent with *State* civil laws without mentioning county or municipal laws. Since municipal or county laws are not State laws of general application, the Act does not authorize the imposition of county or municipal taxes within reservations in respect to Indian property or income. Cf. *Moody* v. *Flowers*, 387 U.S. 97, 101.

Moreover, as the Court of Appeals for the Ninth Circuit recently stated in holding that county zoning ordinances and building codes could not be applied to an Indian reservation subject to Public Law 280 (*Santa Rosa Band of Indians* v. *Kings County*, No. 74-1565, decided November 3, 1975, slip op. 11), tribal governments under the statute are "more or less the equivalent of a county or local government in other areas within the state * * *." They have the authority to impose their own taxes within their reservations. *Morris* v. *Hitchcock*, 194 U.S. 384; see also United States Department of the Interior, *Federal Indian Law* 885-887 (1958). Thus, if the reservation, which is itself a unit of local government, is subjected to taxation by counties and municipalities, it is put at the bottom of the taxing order—a result inconsistent with Congress' concern in Public Law 280 (see 28 U.S.C. 1360(b)) for the preservation of Indian tax immunities. See Goldberg, *supra*, 22 U.C.L.A. L. Rev. at 580-583.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

HARRY R. SACHSE,
Assistant to the Solicitor General.

EDMUND B. CLARK,
JACQUES B. GELIN,
CHARLES E. BIBLOWIT,
Attorneys.

JANUARY 1976.